

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

APR 25 2002

C.H.

Michael N. Milby, Clerk

MARK NEWBY, et al.,

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.

No. H 01-3624

(Consolidated Action)

PAMELA M. TITTLE, et al.,

Plaintiffs,

vs.

ENRON CORPORATION, et al.,

Defendants.

No. H 01-3913

(Consolidated Action)

NOTICE OF ENTRY OF ORDER AUTHORIZING THE  
APPOINTMENT OF STATE STREET AND TRUST COMPANY  
AS THE INDEPENDENT FIDUCIARY FOR  
ENRON'S PENSION PLANS

Elaine Chao, Secretary of the United States Department of  
Labor (the "Secretary") states as follows:

The Secretary of Labor is charged under the Employee  
Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §  
1001, et seq., to protect the interests of individual  
participants and beneficiaries of employee benefit plans as well  
as to vindicate the strong public interest in the integrity of  
the pension system. See, e.g., Donovan v. Fitzsimmons, 805 F.2d

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682, 694 (7th Cir. 1986) (en banc); ERISA § 2, 29 U.S.C. § 1001 (benefit plans "are affected with a national public interest"). In this regard, the Secretary is responsible for administering and enforcing the fiduciary provisions of ERISA. See ERISA §§ 502(a)(2) & (5), 29 U.S.C. §§ 1132(a)(2) & (5) (authority to bring civil actions to enforce ERISA); ERISA § 504, 29 U.S.C. § 1134 (authority to investigate and determine whether anybody has violated fiduciary provisions of ERISA); ERISA § 505, 29 U.S.C. § 1135 (authority to prescribe regulations necessary or appropriate to carry out fiduciary provisions of ERISA). She therefore has a substantial interest in the uniform application of ERISA by the courts. See Donovan v. Cunningham, 716 F.2d 1455, 1462 (5th Cir. 1983), cert. denied, 467 U.S. 1251 (1984).

On April 19, 2002, the United States Bankruptcy Court for the Southern District of New York (Honorable Arthur J. Gonzalez, Judge) granted Enron Corporation's ("Enron") Motion for an order authorizing Enron to enter into a Fiduciary Services Agreement with State Street Bank and Trust Company ("State Street"). A copy of that Order, including Exhibit "A" (Fiduciary Services Agreement) and Exhibit "B" (Amendment No. 1 to Fiduciary Services Agreement) is attached hereto. The Secretary is a signator to the Fiduciary Services Agreement and Amendment No. 1.

The entry of the April 19, 2002 Order followed upon an Agreement between the Secretary and Enron for the removal of the

Committees for the Enron Corporation Savings Plan, Enron Corporation Employee Stock Ownership Plan and Enron Corporation Cash Balance Plan (the "Enron Pension Plans") and for the appointment of an Independent Fiduciary which would assume the powers and duties presently vested in the Committees. A copy of the Secretary-Enron Agreement was filed with this Court on February 13, 2002. See Notice of Agreement Between the Secretary and Enron Corporation.

The Fiduciary Services Agreement and Amendment No. 1 provide substantial protections to the participants and beneficiaries of the Enron Pension Plans including (a) the replacement of Committees for all the Enron Pension Plans (and not just the Enron Savings Plan), (b) the receipt by the Department of copies of all reports provided by the Independent Fiduciary to Enron as well as copies of any proposed amendments to any of the Enron Pension Plans by Enron and (c) amendment of the terms of the Enron Pension Plans as well as all applicable trust agreements by Enron to the extent necessary to implement the terms of the Fiduciary Services Agreement and to reflect the duties assumed by the Independent Fiduciary.

The original Secretary-Enron Agreement filed with the Court on February 13, 2002 anticipated the payment of the fees for the Independent Fiduciary by Enron itself for not less than three years and not by the Enron Pension Plans. However, Enron is

currently under bankruptcy protection and the immediate payment of fees by Enron was not approved by the Bankruptcy Court in its April 19, 2002 Order. Instead, in its April 19, 2002 Order, the Bankruptcy Court provided that State Street or the Enron Pension Plans could apply for payment of fees and reimbursement from Enron at a later time and that such application would be then decided by the Bankruptcy Court.

While the Secretary does not now intend to be a party to this action, the Secretary does request notice and an opportunity to be heard at any hearing held by the Court relating to State Street's appointment and/or duties as the Independent Fiduciary for the Enron Pension Plans and requests that such notice be sent to:

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TIMOTHY D. HAUSER  
Associate Solicitor  
Plan Benefits Security Division

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Because of concerns regarding the spread of anthrax spores through the mail, at the present time all mail sent through the United States Postal to the Department is subject to extraordinary procedures which have had, in many cases, the effect of significantly delaying the delivery of mail to the Department. For this reason, the Department specifically requests that the Court and all the parties serve all papers on the Secretary either through Federal Express or United Parcel Post overnight delivery service or by hand delivery. If service by the Court through Federal Express or United Parcel Post is unavailable, the Secretary respectfully requests service by the Court only be made through FAX at 202-693-5610 or e-mail at schloss-michael@dol.gov and perlman-leslie@dol.gov. The Secretary appreciates the cooperation of the Court and the parties in dealing with these extraordinary circumstances.

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Respectfully submitted:

Dated: April 24, 2002

For the Secretary:

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Solicitor of Labor

TIMOTHY D. HAUSER  
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## CERTIFICATE OF SERVICE

The undersigned certifies that on the 24th day of April 2002 a true and correct copy of the forgoing:

### NOTICE OF ENTRY OF ORDER AUTHORIZING THE APPOINTMENT OF STATE STREET AND TRUST COMPANY AS THE INDEPENDENT FIDUCIARY FOR ENRON'S PENSION PLANS

was served upon all parties, representatives and attorneys in the above entitled and numbered case, by United States Mail, First Class, postage pre-paid, at the following addresses:

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A handwritten signature in black ink, appearing to read 'Michael Schloss', written over a horizontal line.

**Michael Schloss**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Chapter 11
	:	
ENRON CORP., et al.,	:	Case No. 01-16034 (AJG)
	:	
Debtors.	:	Jointly Administered
-----X	:	

ORDER PURSUANT TO SECTION 363 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 2002 AUTHORIZING THE  
APPOINTMENT OF STATE STREET BANK AND TRUST COMPANY PURSUANT TO  
THAT CERTAIN FIDUCIARY SERVICES AGREEMENT, AS AMENDED

Upon the motion, dated March 19, 2002 (the "Motion"),<sup>1</sup> of Enron Corp. ("Enron") for an order, pursuant to section 363 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing, among other things, Enron's entry into that certain Fiduciary Services Agreement, dated March 14, 2002 (the "Agreement"), between Enron and State Street Bank and Trust Company ("State Street"), a copy of which is annexed hereto as Exhibit "A"; and upon the Declaration of Brian S. Rosen attesting to the necessity for relief; and Enron having orally amended the Motion to remove the need for expedited relief; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors; and it appearing that due notice of the Motion has been given in accordance with this Court's Amended Case Management Order Establishing, Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and Alternative Methods of Participation at Hearings, dated February 26, 2002, and no other or further notice need be given; and a response in support of the Motion having been filed by the Secretary of the United States Department of Labor; and an

<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

objection to the Motion and the relief requested therein having been interposed by the Creditors' Committee; and a hearing to consider the Motion and the relief requested therein having been held on April 2, 2002 (the "Hearing"); and, based upon the arguments presented at the Hearing and such other proceedings held before the Court; and, upon due deliberation and good and sufficient cause appearing therefor, the Court having determined that (1) the appointment of State Street as independent fiduciary was appropriate and (2) the granting of administrative expense claim status for the fees and expenses of State Street as independent fiduciary for the Plans, as defined below, was inappropriate at this time; and it appearing that, based upon the Court's determination at the Hearing, Enron and State Street have agreed to modify the Agreement as set forth in that certain Amendment No. 1 to Fiduciary Services Agreement, a copy of which is annexed hereto as Exhibit "B"; and, based upon all of the foregoing;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The terms of the Agreement, as amended and subject to the decretal paragraphs of this Order, are fair and reasonable, reflect Enron's exercise of prudent business judgment consistent with its fiduciary duty, are supported by reasonably equivalent value and fair consideration, and were negotiated in good faith and at arms' length between Enron and State Street.

B. Consummation of the Agreement, as amended, in accordance with the terms and provisions of this Order is in the best interest of Enron's chapter 11 estate.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. That portion of the Motion seeking to approve the appointment of State Street as fiduciary for the Plans is granted.
2. That portion of the Motion seeking authorization for Enron to pay as a matter of contract law the fees, expenses, reimbursements, indemnity and other obligations

set forth in the Agreement is denied; provided, however, that such denial is without prejudice to the rights of the Plans or State Street to file one or more motions from time to time seeking entry of an order, pursuant to section 503 of the Bankruptcy Code, directing reimbursement or direct payment of such items as administrative expenses of Enron pursuant to section 507 of the Bankruptcy Code; and, provided, further, that nothing contained in this Order shall prevent any party in interest from opposing such motion or motions on any grounds.

3. Enron is authorized to engage State Street as independent fiduciary pursuant to the Agreement, as amended, in order to perform the duties defined therein with respect to the Enron Corp. Employee Stock Ownership Plan, the Enron Corp. Savings Plan and the Enron Corp. Cash Balance Plan (collectively, the "Plans").

4. Subject to the provisions of decretal paragraph 2 of this Order, (a) upon entry of this Order, the Agreement, as amended, shall constitute a valid and binding post-petition obligation of Enron, enforceable against Enron in accordance with its terms and (b) no obligation, payment or transfer under the Agreement, as amended, shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any defense, reduction, offset or counterclaim; provided, however, that nothing contained in this Order or otherwise shall be deemed to moot or otherwise affect any right to move for reconsideration of, or to appeal from, this Order by any party in interest.

5. The existing administrative committees for the Plans shall not be liable for any actions taken by State Street in connection with the Plans.

6. Pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b), the requirement that Enron file a memorandum of law in support of the Motion is waived.

7. To the extent of any inconsistency between the provisions of the Agreement, as amended, and this Order, the provisions of this Order shall govern.

Dated: New York, New York  
April 19, 2002

**s/Arthur J. Gonzalez**  
HONORABLE ARTHUR J. GONZALEZ,  
UNITED STATES BANKRUPTCY JUDGE



## **EXHIBIT A**

## **FIDUCIARY SERVICES AGREEMENT**

THIS AGREEMENT (the "Agreement") is made, this 14th day of March, 2002, by and between Enron Corp., an Oregon corporation (the "Company") with its principal place of business in Houston, Texas, and State Street Bank and Trust Company ("Fiduciary"), a Massachusetts trust company with its principal place of business at Boston, Massachusetts.

WHEREAS, the Company commenced a chapter 11 case on December 2, 2001 (the "Bankruptcy Case"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, the Company maintains for the benefit of its employees each of the Enron Corp. Employee Stock Ownership Plan ("ESOP"), the Enron Corp. Savings Plan (the "Savings Plan") and the Enron Corp. Cash Balance Plan, each as amended from time to time (collectively the "Plans");

WHEREAS, the trusts relating to the ESOP and Savings Plan hold significant investments which include without limitation common and preferred stock of the Company;

WHEREAS, the Company has entered into an agreement, dated as of February 12, 2002, with the U.S. Department of Labor (the "DOL") concerning the Plans, providing, in part, for the engagement of an independent fiduciary with respect to the Plans (the "DOL Agreement");

WHEREAS, pursuant to the DOL Agreement, the DOL has selected, and the Company has agreed to appoint, Fiduciary to provide independent fiduciary services with respect to each of the Plans as set forth herein; and

WHEREAS, the Company, Fiduciary and DOL have agreed to move the Bankruptcy Court to enter an order finding that any fees, expenses, expense reimbursements (including reimbursement of insurance premiums under the Policies described in Section 5 hereof), and other amounts due and payable under this Agreement (including without limitation, any indemnity payments under Section 6 hereof, including any costs, expenses, or damages of any claims incurred in connection with the defense and/or settlement of any claims made by any persons, entities or other organizations against the Fiduciary with regard to its engagement as an independent fiduciary under this Agreement) will be treated as administrative claims under Section 507(a) of the Bankruptcy Code, 11 U.S.C. §507(a)(1);

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as set forth in the remainder of this Agreement.

### **1. Engagement of Fiduciary**

1.1 The Company hereby appoints and engages Fiduciary to act as an independent fiduciary with respect to each Plan and its related trust. In its capacity as an independent fiduciary with respect to each Plan, Fiduciary shall be responsible for the duties set forth in Appendix A to this Agreement.

- (a) The Company agrees to file no later than March 18, 2002, and the Fiduciary and the DOL, after review and approval, agree to support a joint motion with the Bankruptcy Court requesting on an expedited basis preliminary or interim approval of this Agreement ("Interim Bankruptcy Court Approval") providing, *inter alia*, that any fees, expenses, expense reimbursements (including reimbursement of insurance premiums under the Policies described in Section 5 hereof, and other amounts due and payable under this Agreement (including without limitation, any indemnity payments under Section 6 hereof, including any costs, expenses, or damages of any claims incurred in connection with the defense and/or settlement of any claims made by any persons, entities or other organizations against the Fiduciary with regard to its engagement under this Agreement) will be treated as administrative claims under Section 507(a) of the Bankruptcy Code, 11 U.S.C. §507(a)(1).
- (b) The Company agrees to seek Final Bankruptcy Court Approval (as hereinafter defined) of this Agreement as expeditiously as possible, but in no event later than ten days after the Bankruptcy Court issues its order granting Interim Bankruptcy Court Approval. "Final Bankruptcy Court Approval" shall mean the entry of an order by the Bankruptcy Court approving all of the terms of this Agreement for all purposes, which order has become final and no longer subject to appeal.
- (c) The Company acknowledges and agrees that, once Final Bankruptcy Court Approval has been obtained, all fees, expenses, expense reimbursements (including reimbursement of insurance premiums under the Policies described in Section 5 hereof), and other amounts due and payable under this Agreement (including without limitation any indemnity payments under Section 6 hereof), including any costs, expenses, or damages of any claims incurred in connection with the defense and/or settlement of any claims made by any persons, entities or other organizations against Fiduciary with regard to its engagement under this Agreement shall constitute allowed administrative claims in the Bankruptcy Case entitled to priority in payment under Section 507(a) of the Bankruptcy Code, 11 U.S.C. §507(a)(1), and that the payment of such fees, expenses, reimbursements and indemnity payments and other amounts shall not be subject to application to the Bankruptcy Court or approval by the Bankruptcy Court or any other tribunal or any creditor or other party in interest in the Bankruptcy Case; provided, however, that if a dispute should arise between the Company and the Fiduciary as to the reasonableness of such fees and other amounts, such dispute shall be submitted to the Bankruptcy Court for resolution.

1.2 The term of this Agreement shall commence on the date that Interim Bankruptcy Court Approval is obtained ("Commencement Date") and shall terminate when this Agreement is terminated pursuant to Section 9 by the Company or Fiduciary.

1.3 In connection with its engagement under this Agreement, Fiduciary shall, to the extent that Fiduciary deems appropriate to perform its engagement under this Agreement, review and analyze all documents relating to the Plans and related trust agreements and all financial records with respect to the Plans and all written reports prepared by or provided to the current and prior fiduciaries of the Plans relating to the investment of assets of the Plans and the selection and monitoring of investment fund options made available to participants of the Plans, to the extent such documents are provided to or received by Fiduciary. In addition, Fiduciary will take such other actions or cause others to act on its behalf as it deems reasonable to assist in connection with its engagement under this Agreement and to satisfy its fiduciary obligations. In particular, to the extent it deems appropriate and subject to any required approval of the Bankruptcy Court:

(a) Fiduciary may, at its discretion, independently engage the services of a financial advisor or advisors who will report directly to Fiduciary and not to the Company to assist Fiduciary in determining whether or when to sell or hold any Company stock held in the Plans. Fiduciary and/or such financial advisor will be entitled to timely periodic payment by the Company for all fees and expenses of the financial advisor which are determined by Fiduciary to be reasonable. The Company shall pay all such fees and expenses promptly after its receipt of an invoice therefor.

(b) Fiduciary may, at its discretion, independently engage legal counsel to advise it in connection with its engagement under this Agreement. Fiduciary and/or its legal counsel will be entitled to timely periodic payment by the Company for all fees and expenses of its legal counsel which are determined by Fiduciary to be reasonable. The Company shall pay all such fees and expenses promptly after its receipt of an invoice therefor. It is understood by the Company that legal counsel engaged by Fiduciary will report to and consult solely with Fiduciary and that any attorney-client privilege arising out of this Agreement will not belong to the Company. Fiduciary will review the billing records of its counsel and advise the Company, as appropriate, that the fees and expenses incurred by counsel are reasonable. However, time sheets and billing records of Fiduciary's counsel shall not be disclosed to or distributed to the Company, except to the extent required by applicable law.

(c) Fiduciary may, at its discretion, independently engage other advisors to advise it in connection with its engagement under this Agreement, and Fiduciary and/or such advisor will be entitled to timely periodic payment by the Company for all fees and expenses of such advisors which are determined by Fiduciary to be reasonable. The Company shall pay all such fees and expenses promptly after its receipt of an invoice therefor.

Notwithstanding the foregoing, (i) unless the Bankruptcy Court approves the engagement of an advisor and the terms of such engagement, to the extent that Fiduciary engages an affiliate of Fiduciary to assist Fiduciary in carrying out its duties under this Agreement, such affiliate shall not be entitled to payment of its fees by the Company (or the Plans, as the case may be) and shall be entitled to reimbursement of expenses by the Company (or the Plans, as the case may be) only to the same extent that Fiduciary is entitled to reimbursement of expenses hereunder, and (ii) except for the services described in Section 1.3(a), to the extent that Fiduciary engages another person or entity to assist Fiduciary in carrying out its duties under this Agreement, Fiduciary shall engage an affiliate of Fiduciary if an affiliate of Fiduciary regularly provides the

type of service with respect to which the duty is performed, provided that if Fiduciary nonetheless engages a person or entity that is not an affiliate of Fiduciary to assist it in such regard, such unaffiliated person or entity shall not be entitled to payment of its fees by the Company (or the Plans, as the case may be) and shall be entitled to reimbursement of expenses by the Company (or the Plans, as the case may be) only to the same extent that Fiduciary is entitled to reimbursement of expenses hereunder.

1.4 The Company agrees to cause its employees, third-party administrators and other consultants and agents engaged in the administration of the Plans or in the management of the assets of the Plans to cooperate fully with Fiduciary to permit Fiduciary to discharge its duties with respect to its engagement under this Agreement.

1.5 The Company agrees that, at the request of Fiduciary, the Company will adopt such amendments to the Plans and their related trust agreements and any third-party agreements relating to the Plans and trusts as may be necessary or desirable to clarify Fiduciary's duties and responsibilities with respect to the Plans. In no event will the Company amend any of the Plans or their related trusts to expand Fiduciary's duties pursuant to this Agreement without Fiduciary's advance written approval.

1.6 Fiduciary acknowledges that it is a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") with respect to the Plans to the extent of its engagement under this Agreement, and Fiduciary represents that it will comply with its fiduciary obligations under ERISA with respect to the Plans in regard to its engagement under this Agreement.

1.7 With respect to the matters described in Paragraphs 2, 3 and 4 of Appendix A, Fiduciary and DOL agree to consult on a regular basis regarding Fiduciary's intended courses of action concerning such matters, including, but not limited to, any decisions by Fiduciary as to whether to participate in or opt out of any proposed litigation settlements.

## **2. Fees and Expenses**

2.1 As compensation for services to be performed by Fiduciary pursuant to this Agreement and in recognition of the services required of Fiduciary, the Company agrees to pay to Fiduciary a fee for its services. The annual fee to be paid to Fiduciary for its services hereunder shall be One Million Five Hundred Thousand Dollars (U.S.) (U.S. \$1,500,000) (the "Fee"). Upon Interim Bankruptcy Court Approval, the Company shall promptly pay Fiduciary a single sum payment of Three Hundred Seventy-Five Thousand Dollars (U.S.) (U.S. \$375,000) representing payment of the Fee for the first three (3) months of the Agreement. Thereafter, the Company will pay the Fee in monthly increments of One Hundred and Twenty Five Thousand Dollars (U.S.) (U.S. \$125,000) on the first business day of every month that begins while this Agreement is in effect. Upon any termination of the Agreement, Fiduciary shall not be required to return to the Company any portion of the Fee, provided that, if this Agreement terminates during the first three (3) months following the Commencement Date by reason of a termination initiated by notice from the Fiduciary, Fiduciary shall return to the Company the product of Three Hundred Seventy-Five Thousand Dollars (U.S.) (U.S. \$375,000), multiplied by a fraction,

the numerator of which is 90 minus the number of days the Agreement was in effect before the appointment of a successor Fiduciary and the denominator of which is 90.

2.2 Fiduciary shall also be entitled to payment from the Company for its reasonable out of pocket expenses incurred in connection with its engagement under this Agreement, including without limitation, subject to Section 1.3, reasonable expenses incurred in connection with the negotiation and approval of this Agreement, reasonable expenses incurred for the services of such legal, financial, and other advisors as it deems necessary or appropriate to perform its engagement hereunder, reasonable expenses relating to Fiduciary's participation on any official committee created by the United States Trustee pursuant to the Bankruptcy Code, the reimbursement of insurance premiums under Section 5 hereof, and indemnity payments to be reimbursed pursuant to Section 6 hereof. Such out-of-pocket expenses shall be paid by the Company promptly after its receipt of an invoice therefor. Fiduciary's expenses under this Section 2.2 may include without limitation disbursements and advancements incurred or made by it in accordance with any provision of any Plan (including without limitation the reasonable compensation and the expenses and disbursements of its financial advisor and legal counsel), and out-of-pocket expenses, such as travel expenses, special forms and supplies, telephone, mail and contract delivery charges, to the extent permitted by DOL Reg. §2550.408b-2.

2.3 The Fee is solely for the purpose of compensating Fiduciary for the exercise of its fiduciary responsibilities in connection with its engagement under this Agreement. In addition, Fiduciary shall also receive additional reasonable compensation from the Company for certain special services which are extraordinary in nature and above and beyond the items described above, in such amounts as may be determined in good faith from time to time by the Company and Fiduciary, including but not limited to services as a witness or a party in any litigation or similar proceeding or any governmental proceeding relating to the Plans initiated after the date hereof by parties other than Fiduciary or the DOL, or services relating to any merger, sale or consolidation of the Company.

2.4 To the extent that the Company does not pay Fiduciary for its fees, expenses, indemnity obligations, or reimbursements with respect to the Policy described in Section 5 hereof as set forth herein within ten (10) days after presentment of an invoice or the otherwise applicable due date and subject to Section 2.5, the Company agrees that each of the Plans, as applicable, will provide that such Plan will pay its portion of such fees, expenses, reimbursements and indemnity obligations with respect to such Plan. The Company agrees to reimburse such Plan for any such payment made during the three-year period beginning on the Commencement Date. In the event a Plan does not have sufficient cash and the Company does not timely pay Fiduciary's fees, expenses, indemnity obligations, or reimbursements with respect to each of the Plans, Fiduciary shall have the right and power under this Agreement, subject to the terms of the applicable Plan documents and subject to Section 2.5 hereof, to offset such fees, expenses, indemnity obligations, and reimbursements against the Plan's assets, including without limitation Fiduciary's ability to liquidate Plan assets to the extent necessary to pay for such fees, expenses and reimbursements.

2.5 Where this Agreement provides for a payment to be made by the Company, such payments may be made by the Plans pursuant to Section 2.4, but only to the extent permitted by ERISA.

**2.6** Notwithstanding any other provision of this Agreement, any payment of fees or expenses by the Company under this Agreement shall be subject to any required approval of the Bankruptcy Court.

### **3. Provision of Information and Company Representation**

**3.1** The Company will use its best efforts to furnish or cause to be furnished to Fiduciary or its advisors all current and historical financial and other information regarding the Company and the Plans requested by Fiduciary or its advisors in order for Fiduciary to perform its engagement under this Agreement. The Company represents that the information that it provides will be accurate and complete in all material respects, and it is understood that Fiduciary will rely on the accuracy of that representation to carry out its responsibilities pursuant to this Agreement. However, Fiduciary will not rely upon such information in the performance of its engagement under this Agreement if, based on its review and analysis in the course of its engagement under this Agreement, Fiduciary determines that it is not reasonable for Fiduciary to rely on the information, and Fiduciary will make its own independent judgement regarding the reasonableness of the information. The Company agrees that Fiduciary may request and receive from the DOL, without the consent of the Company, any information in the DOL's possession relating to the Plans.

**3.2** The Company shall provide Fiduciary with a copy of all financial information furnished to or filed with the United States Trustee, any official committee in the Bankruptcy Case, or the Bankruptcy Court, simultaneously with such submission or filing, provided such information is neither privileged nor filed under seal. Further, Fiduciary agrees not to disclose to any party other than the DOL any information it receives from the Company with respect to which the Company has advised Fiduciary in writing that there is an agreement of confidentiality by and among the recipients, except to the extent that the disclosure of such information is necessary for Fiduciary to comply with the provisions of this Agreement.

**3.3** The Company represents to Fiduciary that (a) each of the Plans is qualified under Code Section 401(a), (b) the ESOP satisfies the requirements for an employee stock ownership plan as set forth in Code Section 4975(e)(7), and (c) the related trust of each such Plan is tax-exempt under Code Section 501(a). The Company also represents to Fiduciary that, provided that, while this Agreement is in effect, (a) Fiduciary makes available under the Savings Plan a "broad range of investment alternatives" within the meaning of Department of Labor Regulation Section 2550.404c-1(b)(3), and (b) Fiduciary complies with its fiduciary obligations under ERISA with respect to the matters described in paragraph 1 of Appendix A relating to the Savings Plan in regard to its engagement under the Agreement, while this Agreement is in effect, the Savings Plan is an "ERISA Section 404(c) Plan" as defined in Department of Labor Regulation Section 2550.404c-1(b). With respect to the immediately preceding sentences, however, the Company and Fiduciary acknowledge that the DOL makes no representation as to the nature of the Plans.

### **4. Disclosure to Participants**

**4.1** The Company agrees that all communications to be provided to participants and beneficiaries of the Plans and any other disclosure documents or presentation materials to be

provided or otherwise communicated to Plan participants and beneficiaries of the Plans concerning matters within the scope of Fiduciary's engagement under this Agreement shall be accurate in all material respects. The Company shall provide such materials to Fiduciary in draft form sufficiently in advance of any proposed distribution to participants and beneficiaries such that Fiduciary will have a reasonable period of time in which to conduct its review and propose any revisions to such materials that it deems appropriate.

4.2 The Company further agrees that Fiduciary shall be afforded the opportunity to have a representative present at any meeting of, or presentation to the Plan participants regarding any of the Plans. The Company agrees to provide Fiduciary with reasonable advance notice of any matters to be considered by the Company's board of directors (or, to the extent consistent with the board's ordinary practices by a committee thereof) to the extent that such matters relate to the Fiduciary's engagement under this Agreement. The Company also agrees that Fiduciary shall be afforded the opportunity, upon reasonable advance notice to the Company, to make presentations to the Company's board of directors (or, to the extent consistent with the board's ordinary practice, to a committee thereof) with respect to matters relating to its engagement under this Agreement.

4.3 Without limiting the generality of Section 1.4, the Company agrees to cause its employees, third-party administrators and other agents engaged in the administration of the Plans or in the management of the assets of the Plans to cooperate fully with Fiduciary in communicating with participants and beneficiaries of the Plans.

#### **5. Fiduciary Liability and Employee Benefits Liability Coverage**

Fiduciary agrees that, from the Commencement Date through the termination date of this Agreement, it will make a reasonable effort to obtain from reputable and financially sound insurance carriers acceptable to Fiduciary and pay any and all premiums for, an insurance policy or policies, including "tail insurance" (as defined below) ("Policies") with per claim and aggregate coverage limits up to Eighty Five Million Dollars (U.S.) (U.S. \$85,000,000), and with a deductible or retention amount not exceeding One Million Dollars (U.S.) (U.S. \$1,000,000), providing appropriate and customary fiduciary liability or indemnity coverage that will insure and indemnify Fiduciary (and its affiliated entities, directors, officers, shareholder, employees and other natural persons) against all insurable costs or expenses (including reasonable attorneys' fees), judgments, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation (whether civil, criminal, administrative or investigative) arising out of or resulting from any and all actual or alleged errors, acts or omissions of Fiduciary in the performance of its duties under this Agreement. The Company shall reimburse Fiduciary for any and all premiums paid by Fiduciary under such Policies, but not in excess of One Million Two Hundred Thousand Dollars (U.S.) (U.S. \$1,200,000) per year promptly after its receipt of an invoice therefor. The parties agree that such Policies may be either a separate policy or policies or an addendum, endorsement or rider to any of Fiduciary's existing insurance coverage. In the event of a termination of this Agreement or if Fiduciary is unable to purchase renewal Policies, the Company agrees that if Fiduciary procures "run-off" fiduciary liability or indemnity insurance coverage or an extended reporting period for the then-existing Policy or Policies of such type of insurance (either or both of which alternatives are sometimes called "tail" insurance) for the purpose of providing



insurance coverage for losses (including but not limited to judgments, settlements, damages and litigation defense costs and expenses) that arose out of acts, omissions, errors or conduct that occurred on or before the termination date of this Agreement, the Company agrees to reimburse Fiduciary for any and all premiums paid by Fiduciary for such coverage, but not in excess of the amount of One Million Two Hundred Thousand Dollars (U.S.) (U.S. \$1,200,000) multiplied by the number of years of extended coverage the tail insurance will provide, not to exceed six (6).

## **6. Indemnification**

**6.1** The Company shall provide to Fiduciary the indemnification set forth in this Section 6. The terms of the indemnification set forth herein shall survive the termination of this Agreement and shall be in addition to any other liability which any party may otherwise have to Fiduciary and shall inure to the benefit of the heirs, personal representatives, successors and assigns of each Indemnified Person (as defined below).

**6.2** The Company (the "Indemnitor") agrees to indemnify, defend, reimburse and hold harmless Fiduciary and its attorneys, officers, directors, employees, and controlling persons (any or all of the foregoing hereinafter referred to as "Indemnified Person") against any and all losses, claims, damages, liabilities, costs and expenses (including but not limited to reasonable costs of investigation and preparation and reasonable attorneys' fees, disbursements and other charges), and the aggregate amount paid in connection with, incident to, or in settlement or compromise of any actions, suits, or other legal proceedings, or, governmental investigations (collectively, "Proceedings"), or claims to which an Indemnified Person may become subject under any statute or common law or otherwise, (any and all of the foregoing being referred to as "Losses"), as a result of (a) any claim based, directly or indirectly, with respect to services performed pursuant to this Agreement, including without limitation Fiduciary's participation on any official committee created by the United States Trustee pursuant to the Bankruptcy Code, or (b) any breach of any representation of the Company contained in this Agreement, provided, however, that the Indemnitor shall not be liable for any amounts paid in settlement or compromise which have not been previously authorized and approved in writing by the Indemnitor (which authorization and approval shall not be unreasonably withheld). The Indemnitor further agrees that Fiduciary and the Indemnified Persons shall have no liability to any party for any Losses relating to the engagement under this Agreement except to the extent provided in Section 6.4 hereof.

**6.3** The Indemnitor hereby agrees that, in the event a court of competent jurisdiction holds that indemnification pursuant to this Section 6 is unavailable to any Indemnified Person and insufficient to fully indemnify, defend, reimburse and hold harmless any Indemnified Person

against all such Losses, the Indemnitor shall contribute to the aggregated Losses such amount as is appropriate to reflect (i) the relationship between Fiduciary's fee on the one hand and the aggregate value of the assets of the Plans on the other hand, or (ii) if the allocation provided by, clause (i) is not permitted by applicable law, not only such relative benefit but also the relative fault of the other participants in the engagement under this Agreement, on the one hand, and of Fiduciary and the Indemnified Parties on the other hand, and any other relevant equitable considerations in connection with the matters as to which such losses, claims, damages or liabilities relate.

6.4 In the event any Proceeding shall be instituted involving any Indemnified Person based upon, arising out of or related, directly or indirectly, to this Agreement or any Plan, an Indemnified Person shall have the right to employ its own counsel in any Proceeding, and the reasonable fees and expenses of one such counsel or firm (and local counsel, if necessary) shall be paid by the Indemnitor in the ordinary course of business as they are incurred. Fiduciary or such Indemnified Person shall promptly notify the Indemnitor of the commencement thereof although failure to do so will not relieve the Indemnitor from any liability it has hereunder or otherwise, except to the extent such failure materially prejudices the rights of the Indemnitor. The Indemnitor will be entitled to participate in any Proceeding at its own expense. With respect to services performed by Fiduciary pursuant to this Agreement, the indemnification provisions herein shall not be available to any Indemnified Person with respect to any Losses to the extent that such Losses are finally determined by a court of competent jurisdiction to have been caused by the gross negligence, willful or intentional misconduct, or criminal conduct of such Indemnified Person or of any employee or controlled person of such Indemnified Person. Notwithstanding anything else to the contrary in this Section 6, if any indemnification obligations under this Section 6 are to be paid by a Plan pursuant to Section 2.4 hereof, such indemnification payments will be made only to the extent that any indemnification payment is permitted by ERISA, and only if the Indemnified Person to whom such payment is to be made agrees in writing with the applicable Plan to repay such payment plus reasonable interest in the event that in the final judgment by a court of competent jurisdiction such Indemnified Person is found to have breached its duties or responsibilities under this Agreement. If any indemnity payment to be made by a Plan relates to the settlement or compromise of a claim, no indemnity payment shall be made unless such payment has been previously authorized and approved in writing by a fiduciary of the Plan other than the Company or Fiduciary (which authorization and approval shall not be unreasonably withheld.) For purposes of this authorization and approval, Fiduciary may engage an independent fiduciary acceptable to the DOL to assess the settlement or compromise on behalf of the Plan, and the fees and expenses of such independent fiduciary shall be paid by the Plan.

6.5 The Indemnitor agrees that, in the event any governmental or private department, bureau, commission or regulatory authority, including without limitation any agency of the United States of America or of any state, a committee of the Congress of the United States of America or of the legislature of any state, or a stock exchange or other entity having similar investigative or regulatory authority, shall investigate any Indemnified Person or require any Indemnified Person to respond to procedures designed to discover information (hereinafter referred to as "Investigation") regarding or in connection with, the performance of services rendered by the Indemnified Person pursuant to this Agreement or any Plan, the Indemnified Person shall have the right to employ separate counsel in connection therewith, and the

reasonable fees and expenses of such counsel shall be paid by Indemnitor as they are incurred, except to the extent the Indemnified Party does not have to be indemnified by reason of Section 6.4 hereof.

## **7. Letter of Credit to Secure Company's Obligations**

**7.1** To secure the prompt and complete performance of all of its obligations under this Agreement, including without limitation the obligations set forth in Sections 2.1 through 2.5, Section 5, Sections 6.1 through 6.5 and Section 9, the Company shall cause to be issued and delivered in favor of Fiduciary and its successors and assigns an irrevocable commercial standby letter of credit in form and substance acceptable to Fiduciary (the "Letter of Credit") (or the cash equivalent) upon the occurrence of any of the following events, at the indicated times: (a) if the Company's cash position, as reported in any monthly operating statement required to be submitted to the United States Trustee or the Fiduciary or filed in the Bankruptcy Case, falls below Five Hundred Million Dollars (U.S.) (U.S. \$500,000,000.00), excluding subsidiaries, then promptly upon the occurrence of such event; (b) if a plan of reorganization or liquidation is to be consummated, then no later than the consummation date of such reorganization or liquidation; or (c) if the Bankruptcy Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, then no later than the entry of the order dismissing or converting the Bankruptcy Case. Any plan of reorganization or liquidation filed by the Company or confirmed by the Bankruptcy Court shall contain provisions reflecting the requirements of this Section 7. Without limiting other rights of Fiduciary at law or equity, Fiduciary shall have the right of specific performance to enforce the Company's compliance with this Section 7. Any Letter of Credit shall be issued by a commercial bank (the "Issuer") acceptable to Fiduciary and must be presentable in the Boston, Massachusetts metropolitan area. The amount of the Letter of Credit (or the cash equivalent) shall be Forty Million Dollars (U.S.) (U.S. \$40,000,000) reduced by difference between (a) the amount of the aggregate liability limits of any Policy described in Section 5, or any tail insurance Policy that covers a period of six (6) years, that are then in effect, and (b) the deductible or retention amount of such Policies, but in no event shall the Letter of Credit exceed Fifteen Million Dollars (U.S.) (U.S. \$15,000,000). The Letter of Credit must also be payable at sight without presentation of any other documents, statements, or authorizations, must allow for partial draws, and must have a term of not less than six (6) years. Any Letter of Credit must also provide for its automatic renewal on a year-to-year basis unless the Issuer gives Fiduciary at least two (2) months written notice of non-renewal, and the final expiration date of the Letter of Credit may not be any earlier than the date that is three (3) months after the expiration of the longest applicable statute of limitations relating to Fiduciary's rights under this Agreement. Any Letter of Credit must also be freely transferable to any successor Fiduciary under this Agreement, and the Company and any successor in interest, including any liquidating trust, shall be responsible for the payment of any transfer fee or other cost incident thereto; if the Company and any successor in interest, including any liquidating trust, fails to make such payment, Fiduciary may do so at the Company's or its successor's expense and the Company or its successor shall reimburse Fiduciary for such costs upon demand.

**7.2** Any Letter of Credit (or the cash equivalent) may be drawn upon by Fiduciary to pay the indemnification expenses under Section 6 hereof, or if the Issuer gives notice of non-renewal to Fiduciary and a replacement Letter of Credit (or the cash equivalent) is not delivered to Fiduciary at least thirty (30) days prior to the non-renewed Letter of Credit's expiration date,

or if there is a dispute between Fiduciary and the Company or its successor on the date which is thirty (30) days prior to the stated expiration date of the Letter of Credit over whether Fiduciary may draw on the Letter of Credit, or if Fiduciary at any time reasonably determines that the Issuer is not solvent or that the Issuer has been put into conservatorship or receivership (or any similar program) by any governmental authority having regulatory oversight over the Issuer, or if Fiduciary at any time reasonably determines that there is a likelihood for any other reason that the Issuer would not honor the Letter of Credit if it was to be presented for payment.

7.3 Notwithstanding any implication to the contrary contained in the foregoing, it is understood and agreed that Fiduciary's willingness to accept a Letter of Credit as security in lieu of cash is an accommodation to the Company and that the Company bears all risk of the Issuer failing, refusing or being unable to honor a proper draw thereon. If the Issuer fails, refuses or is unable to honor a proper presentment of the Letter of Credit, the Company or its successor shall be obligated to immediately deliver a replacement Letter of Credit meeting the terms of this Section 7 (or the cash equivalent) to serve as security for the performance of the Company's or its successor's obligation.

7.4 A letter of credit in the form attached hereto meets the technical requirements of this Section 7.

#### **8. Non-Exclusive Contract**

It is expressly understood between the parties hereto that Fiduciary also acts as an advisor and/or fiduciary to other clients in other contexts and, accordingly, Fiduciary may give advice or take action with respect to any of such clients which may differ from the actions taken by Fiduciary hereunder. Nothing in this Section 8 is intended to relieve Fiduciary of any fiduciary responsibilities in connection with the duties described in Section 1.1.

#### **9. Termination**

Subject to the terms of the DOL Agreement, the Company may terminate this Agreement at any time for any reason, provided that it provides at least sixty days advance written notice to Fiduciary. Fiduciary may terminate this Agreement at any time for any reason upon at least sixty days advance written notice to the Company and, if the DOL Agreement is then in effect, to the DOL; but if the DOL Agreement is then in effect, no such termination shall be effective unless and until the DOL has selected and the Company has appointed a successor to Fiduciary under the Plans with respect to Fiduciary's engagement under this Agreement, in which case all provisions of this Agreement shall remain in effect until a successor to Fiduciary under this Agreement has been appointed. In the event of any termination of this Agreement, however, Section 6 and 7 shall remain in full force and effect for all services provided by Fiduciary, and the Company shall pay all fees and expenses due as of the termination date. Notwithstanding the foregoing, if this Agreement does not receive Final Bankruptcy Court Approval within thirty days of the Commencement Date, Fiduciary may terminate this Agreement by providing thirty days written notice to the Company and the DOL, in which case (i) the DOL agrees that it will use its best efforts to select a successor Fiduciary to act hereunder within such thirty day period and (ii) the Company agrees to appoint such successor with respect to Fiduciary's engagement

under this Agreement within such thirty day period; provided, however, no such termination shall be effective until a successor to Fiduciary under this Agreement has been appointed.

**10. Severability**

The parties agree that, in the event a court of competent jurisdiction holds that any part of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect as if the provisions held invalid or unenforceable were never a part hereof.

**11. Notice**

Unless notified in writing to the contrary, all notices shall be mailed or sent by overnight courier:

**11.1 If to Fiduciary:**

State Street Bank and Trust Company  
Two International Place  
Boston, Massachusetts 02110  
Attention: Kelly Q. Driscoll

With a copy to:  
State Street Bank and Trust Company  
225 Franklin  
Boston, Massachusetts 02110  
Attention: Maureen S. Bateman

With a copy to:  
Jones Day Reavis & Pogue  
77 West Wacker Dr.  
Chicago, Illinois 60601  
Attention: Ronald S. Rizzo

**11.2 If to the Company:**

Enron Corp.  
1400 Smith Street  
Houston, Texas 77002-7361  
Attention: General Counsel

With a copy to:  
Skadden, Arps, Slate, Meagher & Flom LLC  
4 Times Square  
New York, New York 10036  
Attention: Stuart N. Alperin,  
Mark Filip

With a copy to:  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Martin J. Bienenstock,  
Mary Jean M. Potenzzone

With a copy to:  
United States Department of Labor  
Office of the Solicitor  
Plan Benefits Security Division  
P.O. Box 1914  
Washington, D.C. 20013  
Attention: Leslie Canfield Perlman,  
Michael Schloss

(If by personal delivery:)  
United States Department of Labor  
Office of the Solicitor  
Plan Benefits Security Division  
200 Constitution Avenue, N.W. Room N-4611  
Washington, D.C. 20013  
Attention: Leslie Canfield Perlman,  
Michael Schloss

**11.3** If to the DOL, at the applicable address listed in Section 11.2.

**11.4** Any party by notice given to the other persons listed in Section 11.1, 11.2 or 11.3, as applicable, in accordance with this Section 11, may change the address or the persons to whom notices or copies thereof shall be directed.

## **12. Survival of Representations**

The parties agree that their representations under this Agreement shall remain in effect until the termination date of this Agreement.

## **13. Entire Agreement/Amendment**

This Agreement constitutes the entire agreement of the parties with respect to the engagement described herein. This Agreement may only be amended by a written instrument signed on behalf of each of the Company, Fiduciary and, if the DOL Agreement is in effect on the effective date of such amendment, the DOL.

## **14. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument

14-Mar-2002 17:35 From

T-106 P.002/002 F-452

**15. Successors**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**16. Headings**

The headings in this Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.

**17. Governing Law**

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable to agreements made and to be performed in such Commonwealth, without regard to the principles thereof regarding choice or conflicts of law.

EXECUTED this 14th day of March, 2002, to be effective as of the Commencement Date, except as otherwise specifically provided herein.

**STATE STREET BANK and TRUST COMPANY**

By:   
Its: Executive Vice President and  
General Counsel

**ENRON CORP.**

By:   
Its: Interim Chief Executive Officer and  
Chief Restructuring Officer

**ACCEPTED AND AGREED:****UNITED STATES DEPARTMENT OF LABOR**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

03-14-02 05:25pm From-DEPT OF LABOR

2026935610

T-924 P.02/02 F-084

**15. Successors**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**16. Headings**

The headings in this Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.

**17. Governing Law**

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable to agreements made and to be performed in such Commonwealth, without regard to the principles thereof regarding choice or conflicts of law.

**EXECUTED** this 14th day of March, 2002, to be effective as of the Commencement Date, except as otherwise specifically provided herein.

**STATE STREET BANK and TRUST COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ENRON CORP.**

By:   
Its: Interim Chief Executive Officer and  
Chief Restructuring Officer

**ACCEPTED AND AGREED:**

**UNITED STATES DEPARTMENT OF LABOR**

By:   
Its: Associate Solicitor General



## Appendix A

### DUTIES OF FIDUCIARY PURSUANT TO SECTION 1.1

1. Fiduciary responsibility for the management and investment of assets of each of the Plans, including but not limited to the following:

- (a) Determine whether or when to sell or hold Company stock or other employer securities.
- (b) Select and monitor the performance of investment fund options for Savings Plan.
- (c) Monitor continuing prudence of investment fund options under Savings Plan, and when appropriate, modify or eliminate such options.
- (d) Select and monitor performance of investment managers with respect to each Plan, including but not limited to approval of strategic allocation targets and ranges for the Plans; approval of the benchmark criteria for such investment managers; and participation in periodic meetings with service providers to evaluate quality and competitiveness.
- (e) Implement any pass-through voting or similar procedures attributable to securities held under the Plans, including without limitation the institution of procedures necessary to ensure the confidentiality of pass-through directions made by participants and beneficiaries of the Plans and to direct the trustee of the Plans with respect to any voting or tender decisions regarding Company stock held by the Plans.
- (f) Manage Plan assets not managed by investment managers.
- (g) Assume the duties and responsibilities set forth in paragraph 4 of the DOL Agreement with respect to the above referenced matters.

2. Monitor participation of Plans in any litigation matters (including to the extent it deems appropriate, meeting with parties and counsel to such parties in any litigation matters) and determine whether to participate in class actions. To the extent that such claims relating to one or more of the Plans are pursued by a committee appointed by the United States Trustee pursuant to Section 1102 of the Bankruptcy Code, 11 U.S.C. §1102, Fiduciary shall monitor the interests of such Plan with regard to the activities of such committee.

3. Determine whether the Plans have any claims that may be made in the bankruptcy proceedings and represent the interest of the Plans in all bankruptcy matters. To the extent that such claims relating to one or more of the Plans are pursued by a committee appointed by the United States Trustee pursuant to Section 1102 of the Bankruptcy Code, 11 U.S.C. §1102, Fiduciary shall monitor the interests of such Plan with regard to the activities of such committee.

4. Determine whether the Plans have any claims against any other parties that are not the subject matter of pending lawsuits, and if so, to handle such claims, except to the extent that Fiduciary has knowledge that such claims relate to matters being investigated by the DOL. Notwithstanding the foregoing sentence, Fiduciary shall not have any obligation or responsibility to affirmatively initiate an investigation to determine whether any current or prior fiduciary with respect to any Plan has committed a fiduciary breach under ERISA prior to the Commencement Date, but Fiduciary will advise the DOL of any facts that suggest that a fiduciary breach under ERISA has been committed. To the extent that such claims relating to one or more of the Plans are pursued by a committee appointed by the United States Trustee pursuant to Section 1102 of the Bankruptcy Code, 11 U.S.C. §1102, Fiduciary shall monitor the interests of such Plan with regard to the activities of such committee.

**APPROVED FORM OF LETTER OF CREDIT**

[NAME AND ADDRESS OF ISSUING BANK]

[NOTE: ADDRESS MUST BE IN BOSTON MASSACHUSETTS METROPOLITAN AREA]

**STANDBY IRREVOCABLE LETTER OF CREDIT**

[Date]

[Reference Number]

[Name and address of beneficiary]

Gentlemen:

By the order of \_\_\_\_\_ (the "Account Party"),  
having a current address at \_\_\_\_\_, we hereby open in  
your favor our irrevocable letter of credit for the amount of \_\_\_\_\_  
Dollars (U.S.) (U.S. \$ \_\_\_\_\_,00), available by your draft[s] at sight drawn on us at the above address,  
and accompanied by a statement purportedly signed by an authorized signer on your behalf in the form of  
Exhibit A attached hereto, except as provided in the following paragraph, but in any event not later than  
the expiration date hereof.

This letter of credit expires at this office on \_\_\_\_\_, 20\_\_\_\_. Notwithstanding the  
foregoing expiration date, the term of this letter of credit shall automatically be renewed from year to  
year, and shall finally be renewed so as to expire on \_\_\_\_\_, 20\_\_\_\_, without notice to you or to  
our Account Party, unless we give you actual written notice of nonrenewal at least two (2) months prior to  
any annual expiration date or prior to the aforesaid final expiration date, as applicable. Upon your receipt  
of such notice, you may draw your sight draft on us prior to the then-relevant expiration date for the  
unused balance of this letter of credit, which sight draft shall be accompanied by your signed written  
statement that you received notification of our election not to renew. In such event, your draft need not  
be accompanied by a notice in the form of Exhibit A attached hereto but must be marked "Drawn under  
[NAME OF ISSUING BANK] letter of credit No. \_\_\_\_\_."

Partial drawings are permitted.

Drawings under this letter of credit will be honored in the order received, as determined by us  
(any such determination to be conclusive), and to the extent that there remains an aggregate amount  
available to satisfy such drawings.

We are informed by our Account Party that this letter of credit is issued for the benefit of State Street Bank and Trust Company, and its successors and assigns, as Fiduciary under a Fiduciary Services Agreement, as the same may be from time to time amended. Reference to the foregoing is for informational purposes only and we are in no way concerned with or bound by the foregoing.

This letter of credit is transferable and may be transferred more than once. [IF REQUIRED BY ISSUER: No transfer will be effected until our transfer form, attached hereto as Exhibit B, is completed and returned to us along with the original of this letter of credit for endorsement and our transfer fee is paid to us.]

Except as is otherwise expressly stated herein, this letter of credit shall be governed by the Uniform Commercial Code and other laws of the Commonwealth of Massachusetts, without regard to conflicts of laws, and, to the extent said jurisdiction's laws do not apply, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (1993).

A draft drawn under and in compliance with the terms of this letter of credit will be duly honored if presented to us on or before the above-stated expiration date.

Very truly yours,

[NAME OF ISSUING BANK]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO  
LETTER OF CREDIT**

**[Date]**

**[Name of issuing bank]  
[Address of issuing bank]**

Attn: \_\_\_\_\_

Subject: Your letter of credit number \_\_\_\_\_  
dated \_\_\_\_\_ (the "L/C")

Gentlemen:

The undersigned hereby certifies that it is entitled to draw on the L/C under the terms of that certain  
Fiduciary Services Agreement dated on or about \_\_\_\_\_, 20\_\_, as it has been amended,  
supplemented, assigned or otherwise modified to date.

The undersigned hereby presents the accompanying draft for payment in the amount of  
\$ \_\_\_\_\_.

Very truly yours,

**[NAME OF BENEFICIARY]**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**AMENDMENT NO. 1 TO  
FIDUCIARY SERVICES AGREEMENT**

The Fiduciary Services Agreement, dated March 14, 2002 ("Agreement") (attached hereto as Appendix A), by and between Enron Corp., an Oregon corporation (the "Company") with its principal place of business in Houston, Texas, and State Street Bank and Trust Company ("Fiduciary"), a Massachusetts trust company with its principal place of business at Boston, Massachusetts, is hereby amended, as follows:

1. The Agreement is hereby amended so that Section 1.2 provides as follows:
  - 1.2 The term of this Agreement shall commence immediately upon entry of a Bankruptcy Court order, with respect to the Company's motion dated March 19, 2002 (the "Motion"), approving State Street's engagement as Fiduciary under the Agreement as amended by this Amendment No. 1.
2. The Agreement is hereby amended to add a new Section 2.7 immediately following Section 2.6 to read as follows:
  - 2.7 Except as otherwise provided in this Section 2.7, notwithstanding any other provision of the Agreement, unless and until the Bankruptcy Court approves the payment by the Company of the fees, expenses, reimbursements and indemnity obligations as set forth in the Agreement as in effect prior to this Amendment No. 1, relating to Fiduciary's service as a fiduciary of the Plans, the Company shall cause the Plans to pay such amounts from time to time as directed by Fiduciary except where such direction would be a violation of the Company's fiduciary responsibility under ERISA. In addition, unless and until the Bankruptcy Court approves the payment by the Company of the indemnity obligations as set forth in the Agreement, the provisions of Section 7 of the Agreement shall not be applicable.
3. The Agreement is hereby amended to add a new Section 2.8, immediately following Section 2.7, to read as follows:
  - 2.8 The Company acknowledges and agrees that Fiduciary may, in its discretion, from time to time file, on behalf of itself and any of the Plans, a motion in the Bankruptcy Case pursuant to Section 503 of the Bankruptcy Code, 11 U.S.C. §503, seeking payment or reimbursement from the Company as an administrative expense pursuant to Section 507(a)(1) of the Bankruptcy Code, 11 U.S.C. §507(a)(1), for any or all fees, expenses, expense reimbursements (including reimbursement of insurance premiums under the Policies described in Section 5 hereof), and other amounts due and payable by the Plans or the Company under this Agreement (including without limitation any indemnity payments under Sections 6 or 7 hereof), including any costs, expenses, or damages or any claims incurred in connection with the defense and/or settlement of any claims made by any persons, entities or other organizations against Fiduciary with regard to its engagement under this Agreement. The Company also acknowledges and agrees that the DOL and any other party in interest

reserves the right to seek reconsideration of or to appeal the Bankruptcy Court's denial of that portion of the Motion that sought authorization for the Company to pay as a matter of contract law the fees, expenses, reimbursements, and indemnity obligations and other obligations set forth in the Agreement.

4. Section 5 of the Agreement is hereby amended to substitute the phrase "aggregate coverage limits up to Fifty Million Dollars (U.S.) (U.S. \$50,000,000)" for the phrase "aggregate coverage limits up to Eighty Five Million Dollars (U.S.) (U.S. \$85,000,000)."
5. Except as provided herein, the Agreement shall remain in full force and effect.

*[The Remainder of this page is intentionally left blank.]*



**EXECUTED** this 17<sup>th</sup> day of April 2002.

**STATE STREET BANK and TRUST COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ENRON CORP. AS DEBTOR AND DEBTOR IN POSSESSION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**UNITED STATES DEPARTMENT OF LABOR**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXECUTED this 17<sup>th</sup> day of April 2002.

**STATE STREET BANK and TRUST COMPANY**

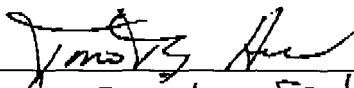
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Its: \_\_\_\_\_

**ENRON CORP. AS DEBTOR AND DEBTOR IN POSSESSION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**UNITED STATES DEPARTMENT OF LABOR**


By:   
Its: Associate Solicitor General

**EXECUTED** this 17<sup>th</sup> day of April 2002.

**STATE STREET BANK and TRUST COMPANY**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ENRON CORP. AS DEBTOR AND DEBTOR IN POSSESSION**

By:  \_\_\_\_\_  
Its: \_\_\_\_\_ *Rth*

**ACCEPTED AND AGREED:**

**UNITED STATES DEPARTMENT OF LABOR**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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PAGE 02

TO : PHONE NO. : 17814770177

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EXECUTED this 17<sup>th</sup> day of April 2002

STATE STREET BANK and TRUST COMPANY

By: MS. E. L. ...  
In: Executive Vice President & General Counsel

ENRON CORP. AS DEBTOR AND DEBTOR IN POSSESSION

By: \_\_\_\_\_  
In: \_\_\_\_\_

ACCEPTED AND AGREED:

UNITED STATES DEPARTMENT OF LABOR

By: \_\_\_\_\_  
In: \_\_\_\_\_